

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**ERASTO ARROYO BARCENAS;** §  
**MELVIN AMADOR RODAS; IVAN RUANO** §  
**NAVA; NOLIS LEYVA-GONZALEZ; JOSE** §  
**CARLOS GOMEZ-COLORADO; JOSE LUIS** §  
**DOMINGUEZ-ROJAS; MELVIN AMAYA** §  
**ZELAYA; JESUS CURIPOMA; OSCAR** §  
**SERRANO MARTINEZ; CHRISTIAN IVAN** §  
**RUIZ-RODRIGUEZ; ISRAEL BAYLON** §  
**ARELLANO; JOSE LOPEZ LOZANO;** §  
**MIGUEL LOPEZ LOZANO; FRANCISCO** §  
**VILLALPANDO RAMOS; CESAR GALINDO** §  
**ESCOTO,** §  
    **Plaintiffs,** §  
    **Individually and On Behalf of the Class** §  
    **of Those Similarly Situated,** §

**VS.**

**Case No. 22-397**

§  
**STEVEN MCCRAW in his individual capacity;** §  
**GREG ABBOTT in his individual and official** §  
**capacities; BRYAN COLLIER in his individual** §  
**capacity; BRAD COE in his individual capacity,** §  
**and KINNEY COUNTY, TEXAS** §  
**Defendants.** §

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PLAINTIFF'S RESPONSE IN OPPOSITION TO MOTION OF IMMIGRATION REFORM  
LAW INSTITUTE TO FILE BRIEF AS *AMICUS CURIAE*

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NOW COMES Plaintiffs, and files this its Response in Opposition to Motion of Immigration Reform Law Institute to File Brief As *Amicus Curiae*, and in support thereof Plaintiffs would show the Court as follows:

“The extent to which the court permits or denies *amicus* briefing lies solely within the court's discretion.” *U.S. ex rel. Gudur v. Deloitte Consulting LLP*, 512 F. Supp. 2d 920, 927 (S.D. Tex. 2007), *aff'd sub nom. U.S. ex rel. Gudur v. Deloitte & Touche*, No. 07-20414, 2008 WL

3244000 (5th Cir. Aug. 7, 2008); *see also Waste Mgmt. of Pa., Inc. v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995) (“The extent, if any, to which an *amicus curiae* should be permitted to participate in a pending action is solely within the broad discretion of the district court.”) (collecting cases). Indeed, “[n]o statute, rule, or controlling case defines a federal district court’s power to grant or deny leave to file an *amicus* brief ....” *Deloitte Consulting LLP*, 512 F. Supp. 2d at 927. In the absence of authority governing a district court’s decision to grant or deny a nonparty’s motion for leave to file an *amicus* brief, “district courts commonly refer to Rule 29 [of the Federal Rules of Appellate Procedure] for guidance.”<sup>1</sup> *Id.* Moreover, “[f]actors relevant to the determination of whether *amicus* briefing should be allowed include whether the proffered information is ‘*timely and useful*’ or otherwise *necessary to the administration of justice*.” *Id.* (emphases added); *see also Trahan v. Long Beach Mortg. Co.*, No. 9:05-CV-29 (TH/KFG), 2006 WL 8440677, at \*1 n.1 (E.D. Tex. Feb. 9, 2006) (“Because there is no general right of non-parties to be heard in pending litigation, it is incumbent on those seeking *amicus* status to request leave to appear whereby they demonstrate that their participation is both *timely and useful*.” (emphasis added)); *Bryant v. Better Bus. Bureau of Greater Md., Inc.*, 923 F. Supp. 720, 728 (D. Md. 1996) (“A motion for leave to file an *amicus curiae* brief, however, *should not be granted* unless the court deems the proffered information *timely and useful* ....” (emphasis added) (citations, emphasis, and quotation marks omitted)).

In looking to Fed. R. App. P. 29 for guidance, the proposed *amicus* brief of Immigration Reform Law Institute fails to explain or support the desirability of such briefing in the instant case. (Fed. R. App. P. 29(3)(B)). Furthermore, it is untimely both under Fed. R. App. P. 29 and due to the status of the current pending motions. In *Texas v. United States*, No. 6:21-CV-00003, 2021 WL 2172837, at \*1–2 (S.D. Tex. Mar. 5, 2021), a request to file an *amicus* brief was denied

because the court found the proposed amicus brief was neither timely, useful, nor necessary to the administration of justice.” Plaintiffs contend that the same analysis applies in the instant case to the proposed amicus brief of Immigration Reform Law Institute. The proposed brief is not timely. The deadline for Defendants’ motions to dismiss has passed and Plaintiffs have already filed responses. The proposed brief offers nothing in addition to the issues already raised by the Defendants. The proposed amicus brief is not necessary to the administration of justice in this case and the motion should be denied.

FOR THE REASONS STATED, Plaintiffs pray that the Motion of Immigration Reform Law Institute to File Brief As *Amicus Curiae* be denied and for such further relief as justice may require.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this day of September 6, 2022, Plaintiffs served their Response to *Amicus Curiae* Brief to Motion to Dismiss on the following counsel via ECF:

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